IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

## No. 76-884

**ROBERT B. MARTIN,**

*Petitioner,*

vs.

**RICHARD J. ELROD,**

*Respondent.*

**(On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, First District)**

## REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

FREDERICK F. COHN
CAROLYN JAFFE
35 East Wacker Drive
Chicago, Illinois 60601
*Attorneys for Petitioner*

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

## TABLE OF CONTENTS



### Table Of Authorities

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## REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

### I.

**THE ILLINOIS RULE IMPOSING UPON PETITIONER A BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT HE WAS NOT IN THE DEMANDING STATE, AND FURTHER, HOLDING THAT HE CANNOT MEET THIS BURDEN IF THERE IS ANY CONTRARY EVIDENCE, VIOLATES DUE PROCESS.**

This Court should reconsider its holding in *South Carolina* v. *Bailey*, 289 U.S. 412 (1933), and its dictum in *Mun-*

*sey* v. *Clough,* 196 U.S. 364 (1905). Substantial developments regarding the rights of citizens to be free from restraint absent compliance with due process has occurred since those cases were decided. *Cf. Morrisey* v. *Brewer,* 408 U.S. 417 (1972); *Goss* v. *Lopez,* 419 U.S. 565 (1975); *Wolff* v. *McDonnell,* 418 U.S. 539 (1974); *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

Due process is not a stagnant concept, but one which is constantly evolving.

In *Frank* v. *Maryland,* 359 U.S. 360, 371 (1959), this Court stated:

> "Of course, this wise reminder, that what free people have found consistent with their enjoyment of freedom for centuries is hardly to be deemed to violate due process, does not freeze due process within the confines of historical facts or discredited attitudes. 'It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does *a living principle,* due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights.' *Wolf* v. *Colorado,* 338 U.S. 25, 27 . . ." (Emphasis added.)

Thus, the decisions in *South Carolina* v. *Bailey* and *Munsey* v. *Clough, supra,* must be re-examined in the light of the expectations and demands of today's society.

## II.

## THE SIXTH AMENDMENT RIGHT TO CONFRONT WITNESSES IS APPLICABLE TO PROCEEDINGS CONTESTING EXTRADITION.

Respondent's attempt to excuse the ruling below by distinguishing *Davis* v. *Alaska,* 415 U.S. 308 (1974), cannot



succeed. Although petitioner was permitted to present evidence of the witness' bias by way of his testimony and that of his ex-wife, he was not permitted to "discredit" the witness by extracting from her, her own admission of prejudice. Confrontation of the witness as protected by the Sixth Amendment requires more than merely being permitted to "mak[e] a record from which inferences supporting a theory of bias could be drawn." (Resp. Br., p. 4)

## CONCLUSION

Petitioner prays that this Court will allow his Petition for a Writ of Certiorari to review the decision of the Illinois courts.

Respectfully submitted,

FREDERICK F. COHN
CAROLYN JAFFE
35 East Wacker Drive
Chicago, Illinois 60601

*Attorneys for Petitioner*